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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re T.J., a Person Coming Under the  
Juvenile Court Law.

RIVERSIDE COUNTY DEPARTMENT  
OF PUBLIC SOCIAL SERVICES,

Plaintiff and Respondent,

v.

B.L. et al.,

Defendant and Appellant.

E065747

(Super.Ct.No. RIJ105550)

O P I N I O N

APPEAL from the Superior Court of Riverside County. Harry (Skip) A. Staley, Judge. (Retired judge of the Kern Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Katherine A. Clark, under appointment by the Court of Appeal, for Defendant and Appellant B.L.

Konrad S. Lee, under appointment by the Court of Appeal, for Defendant and Appellant N.T.

Gregory P. Priamos, County Counsel, and James E. Brown, Guy B. Pittman, and Carole Nunes Fong, Deputy County Counsel, for Plaintiff and Respondent.

Defendants and appellants, B.L. (Father) and N.T. (Mother) (collectively Parents), filed Welfare and Institutions Code section 388<sup>1</sup> petitions requesting they be provided reunification services for minor, T.J., born in March 2013 (Minor). The juvenile court denied their petitions. On appeal, Mother contends the court erred by denying her petition. Father joins Mother's arguments to the extent resolution in her favor may benefit him as well. We affirm.

## I. FACTS AND PROCEDURAL HISTORY

On February 6, 2014, personnel from plaintiff and respondent, Riverside County Department of Public Social Services (the department), received an immediate response referral with respect to Minor and his older sibling, L.L., born in October 2008. Father had been arrested for elder abuse and child endangerment. In L.L.'s presence, Father had pulled the paternal grandmother's (PGM) hair, knocked her to the ground, and pinned her down while she was holding Minor. Father held the PGM on the ground with his foot on her neck for up to an hour. Father told her: "I'll murder you tonight." Father appeared to be on methamphetamine. L.L. described Father becoming mad, smashing things like

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

the Hulk, and grabbing the PGM by the neck and hurting her. L.L. also said Father pushed L.L. on his head hard.

Father, the PGM, Minor, and L.L. were living in a trailer on the back of the property, which was cluttered with piles of boxes, furniture, and other items.<sup>2</sup> The home was permeated with a foul odor. The carpet was soiled and littered with trash and clothing. There were no working lights in the bedroom or bathroom. The home had an abundance of expired food. L.L. was dirty and exuded a foul odor.

Mother had been arrested on January 9, 2014 for resisting arrest, robbery, assault with a deadly weapon, and receiving stolen property. She was serving an eight-month sentence. Both Parents had extensive criminal histories. Father had assumed the care of Minor and L.L. since Mother's arrest.

The PGM reported Father struggled with mental health issues for most of his adult life. Father never consistently maintained appropriate mental health care. He was not currently taking any medications. Father had been hospitalized on numerous occasions pursuant to section 5150. Mother admitted being diagnosed with schizoaffective disorder and had been diagnosed as bipolar.

Mother had an extensive history with the department, which included failing to reunify with three prior children. Part of that history included allegations that Mother had attacked someone in her front yard with an ax, had sold methamphetamine out of her

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<sup>2</sup> The PGM was later described as a hoarder whose primary residence on the property was filled to capacity, prohibiting anyone from living therein.

home, and that she and a prior child had tested positive for amphetamines at that child's birth.

Department personnel filed a juvenile dependency petition alleging Parents had extensive issues with abuse of controlled substances (b-1 & b-7), Father had unresolved mental health issues (b-2), Father maintained the home in a deplorable condition (b-3), Parents had extensive criminal histories (b-4 & b-8), Mother had failed to reunify with three prior children (b-5), Parents had engaged in multiple acts of domestic violence (b-6), and Parents were currently incarcerated (g-1 & g-2). The juvenile court detained Minor and L.L.

In the jurisdiction and disposition report filed March 7, 2014, the social worker recommended the court deny Mother reunification services pursuant to section 361.5, subdivision (b)(10) (failure to reunify with previous children). She recommended Father receive six months of reunification services. Father was warned that due to Minor's age, services would be statutorily limited to six months.

The social worker included additional information in the report: On November 21, 2012, Father filed a request for a restraining order against Mother alleging she had strangled him, punched him in the face, beat him, threw a knife at him, and grabbed hold of his penis and testicles as he begged her to let go of him. The incident was alleged to have occurred on November 9, 2012, in front of L.L. On November 10, 2012, Father alleged Mother hit him with a Maglite flashlight in front of L.L. The request was dismissed on December 13, 2012.

Between January 29, and 30, 2013, Father alleged Mother had left him numerous threatening messages, including one to slit his “you know what.” In a February 5, 2013 police report, Father alleged Mother had stabbed him in his back and right thigh with a box cutter. In an interview, L.L. described receiving red marks when being slapped by Mother. L.L. reported not feeling safe with Mother.

On March 12, 2014, the juvenile court warned Parents they would be statutorily limited to six months of services. The court found the allegations in the amended petition true,<sup>3</sup> sustained the petition as amended, found Minor and L.L. wards of the court, removed Minor and L.L. from Parents’ custody, ordered reunification services for Father, and denied reunification services for Mother pursuant to section 361.5, subdivision (b)(10).

In the six-month status review report filed on August 29, 2014, the social worker recommended Father receive an additional six months of reunification services. Father’s therapist reported that Father was the most mentally impaired she had seen him over the past year. Father was having paranoid and grandiose delusions. He was apparently no longer on his medication. Father also left bizarre messages on the department’s voice mail. He had missed five visits with Minor and L.L. saying he no longer wanted any visitation. Father stopped attending substance abuse treatment and testing. Mother did

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<sup>3</sup> The amended petition removed the g-2 allegation that Father was currently incarcerated.

not show up at the six-month hearing on September 11, 2014. The juvenile court continued Father's reunification services for an additional six months.

On October 28, 2014, the social worker filed for a restraining order against Father after he threatened to behead her for reminding him that he needed to get back into a substance abuse program. The court granted a temporary restraining order, which it reissued on November 19, 2014.

In the 12-month status review report filed on February 25, 2015, the social worker recommended Father's reunification services be terminated and the section 366.26 hearing set. Father had stopped attending therapy in September 2014, and was terminated from a substance abuse program on August 18, 2014. Father had failed to enroll in an anger management program required by the criminal court. Father had visited Minor and L.L. only twice in the past six months, the last time in September 2014.

Mother was released from prison in November 2014. She had been living in a sober living home. Mother had been visiting with L.L. two to three times weekly and having four- to six-hour visits with Minor. Mother had completed parenting and anger management classes. She had had two negative random drug tests<sup>4</sup> and been attending Narcotics Anonymous/Alcoholic Anonymous meetings.<sup>5</sup> Mother filed a section 388 petition, but later withdrew it.

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<sup>4</sup> The tests were dated January 8 and February 5, 2015.

<sup>5</sup> Mother did not provide any documentation of attendance at Narcotics Anonymous/Alcoholic Anonymous meetings.

In an addendum report filed on April 6, 2015, the social worker noted Father had resumed visitation with L.L. on March 6, 2015, with whom he had since visited eight times. Father had visited with Minor once. On March 27, 2015, Father was hospitalized pursuant to section 5150; he was released two days later. Father had been attending therapy and was compliant with his medication regimen. On March 9, 2015, Father was reinstated into the domestic violence program from which he had been terminated on September 23, 2014.

At the 12-month hearing on April 6, 2015, Father was not present. The juvenile court terminated Father's reunification services and set the section 366.26 hearing.

In the status review report filed on July 20, 2015, the social worker recommended Parents' parental rights be terminated. L.L. had been placed with the maternal grandmother (MGM), who was also the legal guardian of L.L.'s older half sibling, R.T., on July 15, 2014. Minor had been placed with the maternal great-aunt (MGA) on August 6, 2014: "The children have adjusted well and are comfortable in their current placement[s]; they have established a strong relationship with their famil[ies]. The caregivers are attentive and make[] sure the children's needs are met. The homes are suitable and safe for the children." Minor and L.L. were reportedly loved and adored by the caretakers who provided them permanent and stable homes. In an addendum report filed August 19, 2015, the social worker noted: "Although [Mother] has completed services, she is in a controlled environment, in a sober living program, in which she must complete services or risk going back to jail. [Mother] has not raised any of her children."

On August 24, 2015, the MGA requested de facto parent status for Minor. The court granted the request on September 17, 2015. On November 30, 2015, the MGM also requested de facto parent status for Minor.<sup>6</sup> On December 14, 2015, R.T., who lived with the MGM, filed a section 388 petition requesting that Minor be permitted to live with him, the MGM, and L.L. On December 15, 2015, the court denied the MGM's request for de facto parent status of Minor.

In a status review report filed on January 25, 2016, the social worker recommended the court deny R.T.'s section 388 petition. The social worker noted that Minor was bonded with the MGA, the now prospective adoptive parent, with whom Minor had lived for 16 months of her three-year life. The social worker opined that it would be detrimental to Minor's best interest to remove her from the MGA. The social worker also noted that Father had relapsed on methamphetamine. Visitation between Parents, Minor, and L.L. had been reduced to twice monthly for two hours each visit due to a strained relationship between the MGM and the MGA; the visits were now supervised by department personnel at the department's offices instead of at the MGM's residence. On February 4, 2016, the juvenile court denied R.T.'s section 388 petition.

The March 25, 2016 addendum report contained the prospective adoptive parent study. The social worker noted that the MGA's residence was the "only stable home that [Minor] ha[d] ever known and she appears very happy and comfortable in the home. She and the [MGA] have established a strong mutual attachment. [Minor] appears to be

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<sup>6</sup> The MGM was the caretaker for L.L., not Minor.



thriving emotionally, physically[,] and developmentally. She receives a lot of love and attention from the prospective adoptive family.” Minor and the MGA were noted to “have a close and loving relationship.” Minor called the MGA “mom” and “momma.”

On March 30, 2016, Father filed a section 388 petition requesting further reunification services as to Minor only. Father alleged as one of the changed circumstances that he now had stable housing.

On the same date, Mother also filed a section 388 petition requesting reunification services as to Minor only.<sup>7</sup> Mother alleged as changed circumstances that she had completed her case plan. She attached the following documents in evidence: (1) a certificate of completion of a 15-week Wellness and Empowerment in Life and Living program dated March 2, 2015; (2) a letter dated February 24, 2015, reflecting her participation in a Wellness and Recovery Action Plan group and Co-Occurring Recovery group; (3) a certificate of completion of a parenting program dated August 22, 2013; (4) a letter dated November 6, 2014, reflecting her enrollment in an anger management program while incarcerated; (5) a certificate of completion of a parenting class dated November 20, 2014; (6) a certificate of completion of the Co-Occurring Recovery group dated April 15, 2015; (7) a certificate of completion of a four-week psychiatric program dated April 21, 2015; and (8) a letter dated November 30, 2015, reflecting termination of her post-release community supervision. Mother asserted the request was in Minor’s best

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<sup>7</sup> Mother had never received reunification services as to Minor as they were denied pursuant to section 361.5, subdivision (b)(10).

interest because Mother had had regular and consistent visitation with Minor, had a strong bond with her, and was loving and attentive during visitation.

At the sections 388 and 366.26 hearings held on April 5, 2016, the parties noted Father had been in custody again since March 11, 2016, on charges of elder abuse.<sup>8</sup> The court found neither changes in Parents' circumstances nor that the requested changes would be in Minor's best interest; thus, the court denied Parents' section 388 petitions. The court then terminated Parents' parental rights.

## II. DISCUSSION

Mother contends the court erred in denying her section 388 petition. We disagree.

### A. *Standard of Review*

Mother contends the denial of a section 388 petition is a question of law or a mixed question of law and fact which must be reviewed by this court de novo. We disagree.

“After the termination of reunification services, a parent's interest in the care, custody and companionship of the child is no longer paramount. [Citation.] Rather, at this point, the focus shifts to the needs of the child for permanency and stability. [Citation.] In fact, there is a rebuttable presumption that continued foster care is in the best interest of the child [citation]; such presumption obviously applies with even greater

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<sup>8</sup> This would appear to conflict with Father's assertion in his section 388 petition dated March 30, 2016 that he now had stable housing.

strength when the permanent plan is adoption rather than foster care.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464.)

“This determination [is] committed to the sound discretion of the juvenile court, and the trial court’s ruling should not be disturbed on appeal unless an abuse of discretion is clearly established. [Citations.] As one court has stated, when a court has made a custody determination in a dependency proceeding, “‘a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].’” [Citations.] And we have recently warned: ‘The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.’ [Citations.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318-319.) “The denial of a section 388 motion rarely merits reversal as an abuse of discretion. [Citation.]” (*In re Amber M.* (2002) 103 Cal.App.4th 681, 685-686.)

Mother maintains that the court in *In re Jeremy W.* (1992) 3 Cal.App.4th 1407 (*Jeremy W.*) applied the de novo standard of review to appellate resolution of the propriety of a juvenile court’s denial of a section 388 petition and that this court should apply that standard as well. *Jeremy W.* is distinguishable. First, *Jeremy W.* involved a situation wherein the juvenile court denied a section 388 petition without first granting a hearing on the matter. (*Jeremy W.*, *supra*, at p. 1413.) In the instant case, the juvenile court granted Parents a hearing on their section 388 petitions prior to denying them.

Second, nowhere does the court in *Jeremy W.* indicate the standard of review on an appeal from the denial of a section 388 petition is de novo. Rather, the court explicitly states the standard of review is abuse of discretion. (*Jeremy W.*, *supra*, 3 Cal.App.4th at pp. 1413, 1416.) Third, if the court had applied a de novo standard of review, it would have decided the merits of the mother's petition itself. This it did not do. Rather, it reversed and remanded the matter with directions that the juvenile court conduct a hearing on the section 388 petition and determine whether the mother had met her burden of proof. Fourth and finally, even if the court in *Jeremy W.* had applied a de novo standard of review, the decision in *In re Stephanie M.* post-dated that decision, applied abuse of discretion as the standard of review, and, contrary to *Jeremy W.*, is binding on this court. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) Thus, the correct appellate standard of review for the denial of a section 388 petition is abuse of discretion.

*B. The Merits of Mother's Petition*

Mother failed to establish her burden of proving that her circumstances had changed and that it would be in Minor's best interest to provide Mother with reunification services. Contrary to Mother's statement in her petition that she had completed her case plan, Mother never had a case plan because the department recommended she not receive such services and the court denied them. Mother questions the court's findings sustaining the petition, but admits any challenge to those findings at this point have been forfeited

by failure to appeal the earlier ruling. (*Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1156.)

Nonetheless, had such services been granted, they would have been directed at ameliorating the problems which led to the removal of Minor and L.L. One such issue was the allegation, sustained by the court, that Mother had an extensive substance abuse problem. Mother had a conviction for misdemeanor possession of controlled substance paraphernalia in 2001. A substantiated department investigation beginning in January 2003 found Mother under the influence of drugs. R.T. had tested positive for amphetamines at birth two months earlier and Mother admitted using drugs to help with giving birth. A later substantiated investigation beginning in September 2006 found Mother selling methamphetamine out of the home. It was reported Mother was providing drugs to a neighbor child. Another investigation beginning in December 2012 found Mother using marijuana while pregnant with another child. Thus, sufficient evidence was adduced that Mother had a substance abuse problem.

However, Mother failed to establish completion of any substance abuse treatment program during the pendency of the instant juvenile proceedings. Mother had alleged completion of a substance abuse treatment program in May 2013; however, that predated the filing of the petition and the court's findings in the instant case that Mother had a *current* substance abuse problem. Mother did attach documentation of her *participation* in a wellness and recovery program, which included addiction recovery aspects and two negative drug tests; however, that documentation was dated more than a year prior to her

filing of the section 388 petition and Mother adduced no evidence she had *completed* the recovery services.

Second, like Father, Mother most certainly would have been required to complete domestic violence services. Indeed, the reports reflected that Mother had engaged in numerous serious domestic altercations with Father, including punching, strangling, and stabbing him. However, other than generalized conflict resolution lessons in her Wellness and Empowerment in Life and Living program and *enrollment* in an anger management program, Mother never completed domestic violence services. Thus, the court acted within its discretion in finding that Mother had failed to meet her burden of proving her circumstances had changed, particularly with regard to the most serious allegations sustained against her.

Furthermore, Mother failed to demonstrate it was in Minor's best interest to prolong the dependency proceedings by providing her six months of reunification services. Both Parents were warned that due to Minor's age, no more than six months of services would be offered. Despite that warning and no effective participation in his services, Father later received an additional six months of services. At the time Mother filed her section 388 petition, more than two years had elapsed since the court detained Minor.

As to visitation, Mother had been arrested approximately a month prior to the initiation of the dependency proceedings and remained incarcerated for 10 months. Thus, Mother had no visitation with Minor for 10 of Minor's first 19 months of life.<sup>9</sup>

With respect to visitation subsequent to Mother's release, the record lacks substantive information on the duration, frequency, and quality of visitation. Supervised visits between Mother and L.L. apparently began in December 2014, though the frequency and duration is not noted. As of December 29, 2014, Mother had visited with Minor only once. As of January 29, 2015, Mother was having visits of up to six hours with Minor at the MGM's home with unspecified frequency.

Father requested a continuance at one point in order to obtain the case logs purportedly to aid in the filing of a section 388 petition on the issue of visitation. However, those logs are sorely lacking in information regarding the quality of the interaction between Minor, L.L., and Parents during that visitation. Although the social worker bears some responsibility for neglecting to include such information in the logs, Mother could have objected on this very basis, but did not. Moreover, Mother failed to call the social worker to testify at the hearing on her section 388 petition and failed to testify herself. Thus, the only information we have as to visitation is that Mother initially had four- to six-hour visits with Minor at an unspecified frequency and later had two-hour visits twice monthly. We have no information regarding the quality of the visits. The only evidence in the record regarding Mother's "bond" with Minor is her own

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<sup>9</sup> Mother agreed not to have Minor and L.L. visit while she was incarcerated.

unsworn, self-serving statement in the petition itself. This does not meet her burden of establishing a bond.

Finally, Mother failed to demonstrate that an additional six-month delay in the resolution of the proceedings would be in Minor's best interest. Reports reflected Minor was bonded with the MGA with whom Minor had lived for 16 months of her three-year life. The social worker noted that the MGA's residence was the only stable home that Minor had ever known and that Minor was very happy and comfortable there. Minor and the MGA had established a strong, mutual attachment. Minor was thriving. She received a lot of love from the MGA, whom she called "momma." Thus, the court acted within its discretion in determining it was not in Minor's best interest to grant Mother six months of reunification services.

### III. DISPOSITION

The judgment is affirmed.

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McKINSTER  
J.

We concur:

HOLLENHORST  
Acting P. J.

CODRINGTON  
J.